INSERT PAGE 33

There is an emerging trend in private disability practice in which attorneys hire doctors to work within their practices as in-house suppliers. These types of associations, sometimes called multi-disciplinary practices ("MDP") or Alternative Business Structures ("ABS"), are becoming more prevalent in the States where they are permitted as a way to provide clients "one-stop shopping." However, in the disability programs, the close association of claimant representatives and doctors can foster the proliferation of questionable medical evidence. For example, in one case, a claimant's law firm had a practice of obtaining medical reports from a small group of physicians; in many instances, the wording of the reports was often identical to those submitted in previous cases. The court found that, while the ALJ may consider the boilerplate nature of a report as one factor in determining the appropriate weight to afford the report, the ALJ may not summarily reject a report solely because it contains some language repetitive of portions of a previously submitted report. Miller v. Commissioner of Social Security, 172 F.3d 303, 305-306 (3d Cir. 1999).

Our regulations prohibit representatives from knowingly making or presenting false or misleading oral or written statements, assertions or representations about a material fact or law. The regulations do not, however, specifically address some of the emerging issues related to MDPs or ABSs, and they do not prevent a representative from repeatedly using the same doctor to provide medical opinions, as long as the representative does not violate our rules on making false or misleading statements. We have the authority to regulate further in this area than we have, but the administrative costs of monitoring these MDPs and ABSs for questionable opinions would be extremely burdensome.

The Act permits us to prescribe rules and regulations governing the recognition of agents or other persons, other than attorneys, who represent claimants before us. However, an attorney in good standing who is admitted to practice before the highest court of his State or residence or a Federal court "shall be entitled to represent claimants before" us. If Congress authorized us to set rules for recognizing practicing attorneys in the same way that we can for non-attorney representatives, we could better regulate the use of MDPs, ABSs, or similar arrangements by attorneys, and thereby diminish the opportunity for the kind of questionable activity that these types of associations may foster.

Congress may also find it appropriate to study the general issue of whether and under what circumstances it may be appropriate to accord weight to a physician's opinion regarding the nature and extent of an individual's limitations. For example, in a related context, the Supreme Court has found that the *Employee Retirement Income Security Act of 1974* does not require plan administrators to

INSERT PAGE 33 (cont.)

accord special deference to the opinions of treating physicians in administering disability plans under that statute. Black and Decker Disability Plan v. Nord, 538 U.S. 822 (2003). In light of the changes in health care practice in recent years, it would also be appropriate to review that issue in the context of Social Security disability programs.